

JUDGE FRAZER CALLS DITCH SUIT A GRAFT

Injunction Denied Martha J. Beebe In Her Suit Against Klamath Canal Company.

"I will say to you now, that I have no sympathy with your client on the merits in this case; she is plainly only opposing an enterprise which will necessarily greatly redound to the benefit of this town in reclaiming noxious and pestilence-breeding swamps, for the sake of getting \$500 for allowing the work to proceed, without having been injured."—Judge Frazer.

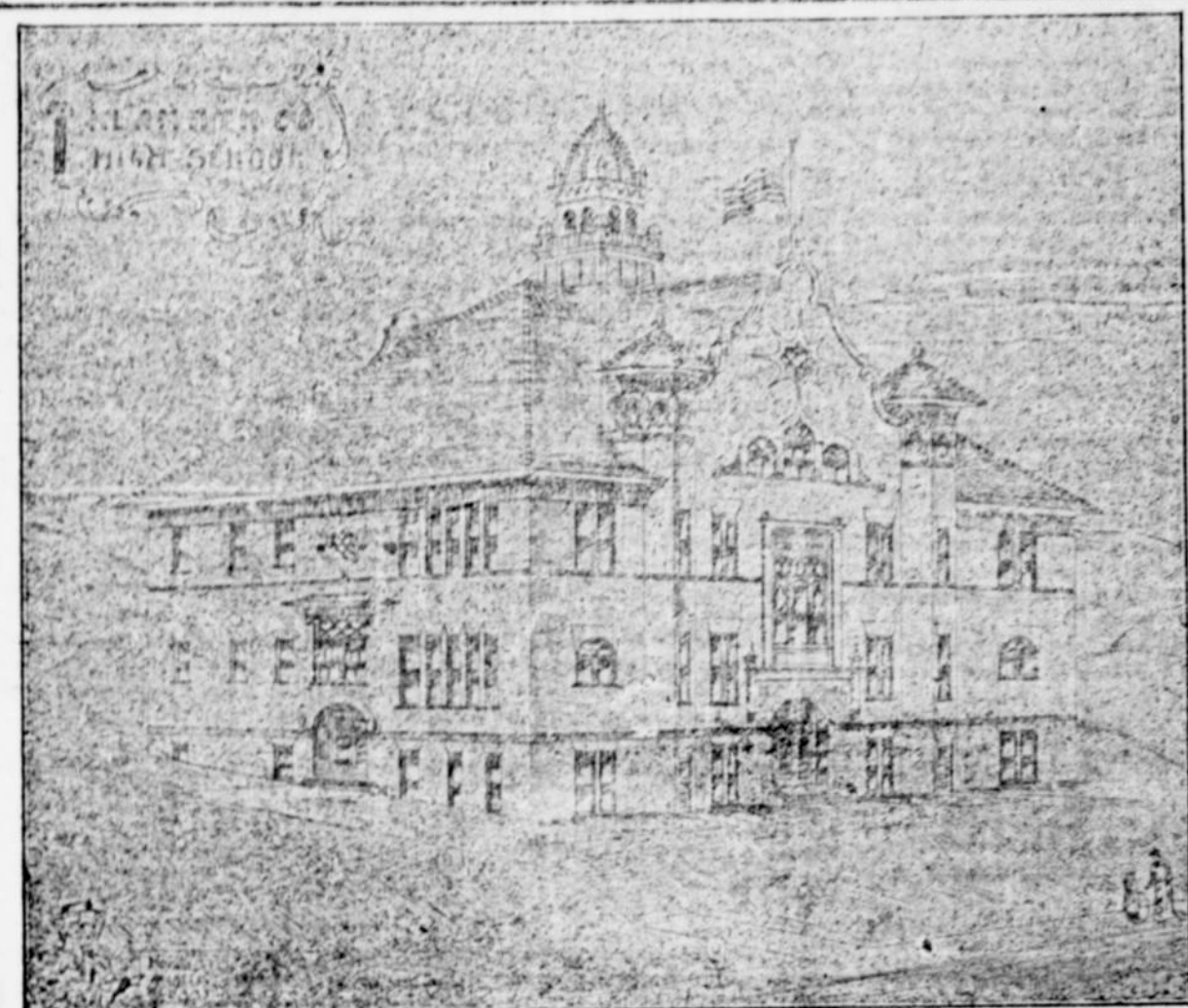
The injunction suit of Martha J. Beebe against the Klamath Canal Company, begun last week, as announced in our columns at the time, was tried on Saturday before Judge A. L. Frazer, of Portland, who was called in specially for the case. The evidence showed a very slight, if any, injury to plaintiff's property, but disclosed a considerable benefit to her, by consequent filling in of low, swampy ground across the street from her land. It appeared that the town board had authorized the Canal Company's work to insure the filling up of swamp lands in the town limits, to be completed within two years, whereupon a pipe line for distribution of water for irrigation and power was to replace the open ditch, and the Canal Company required within that time to re-fill and level up the part of the street used, to its former level and condition, for the faithful doing of which the town exacted a \$5000 bond.

Mrs. Beebe was represented by Attorney D. V. Kuykendall and the defendant by J. C. Rutledge. Before testimony was heard and by consent of the parties Judge Frazer viewed the ground. The first witness for the prosecution was the plaintiff, Mrs. Beebe, who testified in effect that she was the owner of the property in question, lying at the corner of Eleventh and Main streets; that the Klamath Canal Company had been and were now engaged in the construction of a ditch or sluiceway with a width of from 10 to 15 feet along the entire west side of the said property; that the said ditch was being constructed without any authority or permission from her, and that the construction of the ditch prevented ingress and egress to and from her property and thereby caused her damage. Her husband was then called and testified in effect to the same effect and further swore that he had a building in course of construction and was delayed in completing same for the reason that he was unable to haul the lumber on the ground. On being cross-examined, he stated that the land across Main street from the property was boggy and swampy in winter time and remained so for three months in the year, but did not state that it hurt any to have the land swampy part of the year. He admitted however that if the land was filled in and was high and slightly that he might object and consider it a damage to have it excavated and filled with water. Tom Recorder C. C. Brower then testified as to the passage of the resolution or ordinance relative to the granting of the right of way to the Canal Company. Mr. W. K. Brown of the Klamath Canal Company, was then called by the prosecution for the

purpose of introducing as evidence certain plans and maps of the property in question, showing the route and elevations of the ditch or sluiceway. His testimony was along the line of work proposed to be done and the flow of water and purpose of the ditch. For the defense Counselman Geo. K. Hurn testified that the evening before the passing of the resolution, Mrs. Beebe called him up on the phone and asked him if he thought the proposed ditch would damage her property. He told her that he did not believe it would and that the town board would be unwilling to pass anything that would damage anyone's property. She said that she had talked with Mr. Hawkins and Mr. Brown and that she believed it would be all right. Other evidence was submitted showing the condition of the land proposed to be reclaimed and the benefit to be attained therefrom. Mrs. Beebe on being recalled contradicted the testimony of Mr. Hurn in regard to giving her permission for the construction of the ditch.

In his opening argument for Mrs. Beebe, Mr. Kuykendall claimed that while the damage was slight, she had legal rights which could not be taken from her. Judge Frazer remarked that he was satisfied that she was not injured, but would be greatly benefited by the proposed work of the Canal Company, and that, on its merits, he was satisfied to deny the injunction, but would hear Mr. Kuykendall on the presentation of the law. That if there was no law compelling him to grant the injunction, he would find against the plaintiff on the merits. Mr. Kuykendall then intimated that perhaps the Judge had made up his mind before the case was begun. "What's that?" quoth the Judge. Counsel modified his remark to some criticism, to which the Judge replied: "I am responsible for my actions while on the bench, and if you want to exercise your constitutional right to cross the Court, you may do that on the street corners, but here you must confine yourself to your argument. I will say to you now, that I have no sympathy with your client on the merits of this case; she is plainly only opposing an enterprise which will necessarily greatly redound to the benefit of this town in reclaiming noxious and pestilence-breeding swamps, for the sake of getting \$500 for allowing the work to proceed, without being injured. I do not criticize her action; we often see these things tried in courts, but a court of equity has no sympathy with them. When I saw the ground this morning, I saw at once—as no reasonable man can help seeing—that her property would rise in value

PLANS RECEIVED FOR COUNTY HIGH SCHOOL



DIMENSIONS OF BUILDING.

Basement and three floors. The basement will contain a girls play room 33x33-6, girls lunch room 26x30, boys play room 26x33-6, boys lunch room 26x30 and a boys and girls toilets. The remainder of the basement will be used for engine and fuel room. The first floor will contain a commercial school room 29x39, 3 school rooms 25x32, chemistry room 32-6x34, Principal's office 12x29, room 15-6x20, laboratory 11-6x21, dark room 11-6x11-6 and four wardrobes 7x32, 6x29, and 7x32, and a long hall 15-6 wide. The second floor will contain the Assembly room which will be 45x78 feet and with a 17 foot ceiling. This room will have a stage 12x20. On the second floor will also be the library 21x32-6, two school rooms 25x32, teachers' room 12x29 and three wardrobes 7x25, 7x32, and 12x32-6. A large hall will occupy the center. The attic will contain a gymnasium 33x78. The building will be constructed of brick and the roof will be covered with metal tile shingles. The entire basement will be of concrete. Walls and ceilings of all rooms and apartments throughout the first and second floors will be plastered with two good coats of pulp fibre plaster. The plans for the new high school building were received by Judge Baldwin Tuesday from Architect Burggraf, of Albany, and bids will be advertised in the near future for the construction of the building.

WOOD RIVER PEOPLE HELPING RAISE BONUS

Realize The Necessity of a Railroad and Proceed to Organize Chamber of Commerce.

Fort Klamath has organized a Chamber of Commerce, which will work for the upbuilding and advancement of the great Wood River valley; for the dredging of the channel of Wood river, and the opening up of navigation between their town and the county seat. They also hope for the establishment of an electric line between the Fort and Crater lake to accommodate tourists.

Fort Klamath can now boast that she is one of the leading towns of the county. The people of Wood River have organized what will be known as the Fort Klamath Chamber of Commerce, and will work hand in hand with Klamath Falls for the advancement of our country.

She also realizes the benefits to be derived from a railroad and has come forward with a subscription of \$12,000 and expects to increase this amount considerably. W. S. Worden, Secretary of the Klamath Falls Chamber of Commerce, and Captain J. W. Siemens spent last week in the Wood River country in the interest of the bonus for the Weed Railroad. The first part of the week was spent in calling upon some of the prominent people of that valley and making arrangements for a public meeting to be held at the Fort on Wednesday evening. Very little encouragement was received at first as to the prospects of obtaining any assistance from our neighbors to the north. The theory was advanced that a railroad would only result in increased taxes without any material benefits to offset this.

The meeting, however, on Wednesday evening was well attended as the people seemed anxious to consider any proposition that might in any way benefit them. It was held in the new hall recently constructed by James Wheeler, which building is really a credit to the town and capable of seating about 500 people. James Emery was chosen chairman and Lindsay Sismore Secretary. The meeting was opened by Mr. Worden, who carefully described to them every detail of the work accomplished by the Klamath Falls people, from the writing of the first letter to the present time, and showed just how far the work had been advanced and what was yet to be accomplished. He was followed by Col. Wilkerson who made a few pointed remarks on the benefits of a railroad. Judge Thos. Drake, who had arrived the previous evening from the Falls, then addressed the meeting. In his speech, Judge Drake covered the entire ground. On the one side he placed the trivial objection as to the possible increase in taxes and on the other he very plainly pointed out the vast advantages accruing from the building of a railroad, and the possibility of navigation the year around between their town and the county seat. He very strongly urged the opening up of Wood river for navigation by dredging, so as to accommodate the large tourist trade, which is rapidly increasing and which is bound to be an important factor in the business of Fort Klamath.

Attention was also called to the practicality and possibility of the establishment of an electric line between Fort Klamath and Crater Lake for the accommodation of tourists, and also to the fact that best transportation from the terminus and in connection with the railroad would be a greater drawing card for the traveling public than if the road was continued to the Fort. With navigation Fort Klamath would in reality be the terminus of the road and would derive benefits equally as great as Klamath Falls. The vast power that could be developed from Anna Creek was mentioned as an inducement for the investment of capital that would not be overlooked once this country is opened to the world, and lastly the benefits to be derived by the cattle raiser not only from having direct wire connection with the markets of the world, but with quick and cheaper transportation. Judge Drake stated that they should not consider that they were making a donation to any railroad corporation, but that it should be looked upon as a cold blooded business proposition, they would simply be making a small investment from which it could be readily seen that they would reap large profits.

At the conclusion of the address a soliciting committee was appointed consisting of Dan Ryan, James Wheeler, W. S. Worden and J. W. Siemens. This committee spent the remainder of the week in calling on the people of the valley and met with encouragement wherever they went. A number of larger land owners were not at home but their representatives believe that they will be willing to do their share.

Organize a Chamber of Commerce. On Saturday evening a meeting of the leading men of the Wood River country met at the Falls for the purpose of organizing a Chamber of Commerce, at which time the meeting was enthusiastic and a preliminary organization was effected with J. W. McCoy as president, James Wheeler vice-president and Frank Butler, secretary and treasurer. The object of the organization as stated, is to work systematically for the benefit and in the interest of Fort Klamath and surrounding country. The matter of opening up Wood river for navigation, and any other matters of general interest that may come up will be investigated by this club and by their united efforts they expect to assist materially in the development of Northern Klamath. Another meeting has been called for Saturday evening, March 25, at which they will perfect organization and at which they expect to take in a number of new members. It is desired to have as large a membership as possible as the stronger the organization, the more they can accomplish.

hundreds of dollars through the filling in of the unsightly and noxious bog-hole in front of her residence, in sight of her very door, and I have vainly listened for evidence of any injury to her property from the proposed work. Her husband admitted on the stand, that if the ground, where now that bog-hole exists, were high slightly ground, and it was proposed to excavate it so as to put it in the condition it now is in, he would rush into this court for an injunction to stop it, and probably claim thousands of dollars damage. I am not criticizing you for taking your client's case, but I

have no sympathy for you or your client on the merits of this suit. Besides it appears that before the town council would grant permission for this work on the street, they took time to consider. Mr. Hurn and Mr. Bishop made the impression on me of good, careful men, having the interests of the town at heart, and they certainly would not have granted the franchise without the consent of those affected. Now, after the Canal Company has expended nearly two thousand dollars in this work, she is in equity estopped from saying she is not satisfied. If you have any

law holding that I cannot so find, proceed with the argument." The argument proceeded, but evidently without the law required, since his Honor decided the suit before leaving the bench, against Mrs. Beebe, and dissolving the injunction. As we noted in our column last week, this is a remarkable suit, from the fact that it was brought to trial within four days of its commencement, and besides being decided on the day of trial, it is remarkable in that one of the attorneys in his argument endeavored to criticize the court, receiving a rebuke seldom heard.

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Nekwear, Ties, Belts, Etc., Etc.

BRICK STORE

INDIANS WHO HAVE BEEN ALLOTTED LANDS ARE UNDER STATE CONTROL.

J. W. Evans, assistant superintendent of the Klamath Indian reservation, has requested Attorney-General Crawford to give his opinion as to whether Indians who have received their allotment of lands are under United States or state law, and it has been found by Mr. Crawford that the latter is the case.

Mr. Crawford says: "Under the allotment act enacted February 8, 1887, Indians who have received their allotment of land are citizens of the United States and are subject to taxation as such, also that they are under the supervision of the state laws, and the additional laws which have been enacted for their protection by congress such as liquor laws, etc."

The allotment which is allowed them under the allotment law mentioned is 160 acres for the head of every family, 80 acres for every Indian over the age of 18 who is single, 40 acres for all orphans under the age of 18, 40 acres for all others under the age of 18, who were born prior to the President's order directing the allotments.

Pure blood Brown Leghorn and Plymouth Bard Rock eggs for sale. Inquire of E. L. Hopkins.

BOWDOIN JOB PRINTER SIGN PAINTER HURN'S HARDWARE STORE Klamath Falls, Or.

NOTICE TO WATER USERS.

Notice is hereby given that at 1 o'clock p. m. on Saturday, April 1, at the Opera House in Klamath Falls, there will be held a meeting of the stockholders of the Klamath Water Users Association for the purpose of perfecting organization, adopting by-laws, electing directors for the ensuing year, and to take action on such other matters as may properly come before the meeting. All owners of land under the Klamath Irrigation Project are requested to be present.

By order of the Committee and Incorporators.

J. SCOTT TAYLOR, Secretary.



CLOCKS FOR ALL Just received a new line of fancy mantel clocks. The latest hit of the season. I also have the largest line of Watches, Jewelry and Optical goods in the county. Get prices before sending away for your goods. H. J. WINTERS, Watchmaker and Jeweler. Graduate Optician

THOUSANDS OF ACRES OF LAND SUBSCRIBED THIS WEEK FOR IRRIGATION.

Messrs. Kuykendall and Holbrook returned this morning from Merrill and Bonanza where they have been to meet the ranchers and receive subscriptions of land for government irrigation. They spent Tuesday at Bonanza and while there gave out over 150 blanks to parties who wanted irrigation. A great many of these papers will be taken home and signed and returned to Klamath Falls before the first of April as the land owners are desirous of having a voice in the selection of the first officers and directors of the Water Users' Association. Between 10 and 12 thousand acres were signed at Bonanza on Tuesday.

On Wednesday the party went to Merrill, where several thousand acres more were signed up. Mr. Kuykendall stated that the necessary amount of land has already been secured to permit them to perfect the incorporation of the association, and that from present indications over 100,000 acres will be subscribed before the first of the month. Everywhere the people are showing great enthusiasm and are anxious to sign up their land.

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